

OAL CHECKLIST EMERGENCY APA RULEMAKING

OAL File No. _____ - _____ - _____ E

Agency: _____

Reviewer: _____

Due Date: _____

(All citations are to the Government Code, unless otherwise specified. CCR means California Code of Regulations.)

REQUIREMENT

OK?

PROBLEMS

What is the status of the notice of proposed rulemaking related to this emergency filing? <ul style="list-style-type: none"> Previously submitted. Submitted with the emergency filing. Not yet submitted. 		
1. FORM 400 (1 CCR 6)		
Name of agency set out in AGENCY box?		
Subject/topic of changes described in SUBJECT/TOPIC box?		
All SECTIONS AFFECTED and TITLES listed?		
TYPE OF FILING designated as "Emergency"?		
EFFECTIVE DATE designated? (11346.1(d))		
Notice to, or review, consultation, approval, or concurrence by another agency or entity required?		
Name of CONTACT PERSON and TELEPHONE NUMBER PROVIDED?		
SIGNATURE by agency head or person listed in a signed delegation order submitted with emergency materials or on file with OAL? Dated? Typed name/title? (11343(f), 1 CCR 6)		
2. EMERGENCY REGULATION TEXT		
Final regulation text attached to original and six copies of Form 400? (11343, 1 CCR 6) <ul style="list-style-type: none"> Document(s) incorporated by reference attached to original for filing with Secretary of State? (Six duplicate copies of document incorporated by reference <i>not required</i> for formal publication reasonably available from commonly known or identified source.) (1 CCR 20(d)) Regulation section number(s) fit into CCR? 		

<ul style="list-style-type: none"> Underlying text (and Authority and Reference cites) match what is printed in CCR? Final text shows changes to CCR in underline/ strikeout format, including Authority and Reference cites? (1 CCR 8) Building Standard? OSHA standard covered by Health and Safety Code 18943(b)? Otherwise, Building Standards Commission contacted? See Health and Safety Code 18942.1. (11346.1(c)) 	
3. FINDING OF EMERGENCY	
Express finding that the emergency regulation or order of repeal is immediately necessary for the preservation of the public peace, health and safety, or general welfare? (11346.1(b))	
Specific facts included describing the need for immediate action? (11346.1(b)) Alternatively, regulation deemed emergency pursuant to statute?	
Authority and Reference citations included? (11346.1(b) & 11346.5(a)(2))	
Informative digest/policy statement overview included? <ul style="list-style-type: none"> Directly related existing laws and regulations and effect of proposed regulations concisely and clearly summarized? Broad and, if appropriate, specific objectives explained? In plain English? Format similar to Legislative Counsel digest? (11346.5(a)(3)) <ul style="list-style-type: none"> Significant difference from existing, comparable federal regulation or statute described? Citation to federal regulation or statute included? (11346.5(a)(3)) 	
Other statutory requirements satisfied? Any requirements specific to rulemaking agency, specific regulation, or type of regulation? (11346.1(b) & 11346.5(a)(4))	
Local mandate determination (policy or expenditure) included? (11346.5(a)(5)) If "yes," does mandate require reimbursement?	
Estimate of fiscal impact included in written statement supporting finding of emergency? <ul style="list-style-type: none"> Cost to any local agency or school district for which 17500-17630 require reimbursement? Other non-discretionary cost or savings imposed upon local agencies? Cost or saving to any state agency? Cost or savings in federal funding to the state? 11346.1(b) & 11346.5(a)(6)) 	

4. FORM 399 – FISCAL IMPACT	
<p>Fiscal Impact Statement on STD Form 399 properly filled out and Form signed by Agency Secretary, or by the highest-ranking official in the rulemaking agency if the agency is not under an Agency Secretary?</p> <p>No DOF concurrence required. (Per instruction from DOF, March 2000)</p>	
5. OTHER	
<p>Commissioner of Insurance Emergency?</p> <p>Documentation of compliance with notice requirements of Insurance Code 12921.7?</p>	
<p>Department of Corrections?</p> <ul style="list-style-type: none"> • One 160 day "initial effective period" for an emergency regulations (Penal Code 5058.3(a)(1)) • Certification of Operational Needs Emergency. (Penal Code 5058.3 (a) (2) and (a) (3)) <ul style="list-style-type: none"> ▪ Alternative emergency ▪ Initial and one readopt ▪ 10 day comment period ▪ 20 day review period • APA Emergency (Penal Code 5058.3(a)) <ul style="list-style-type: none"> ▪ Not precluded by certification of operational needs emergency 	
<p>Fish and Game Commission Emergency?</p> <ul style="list-style-type: none"> • Public hearing held? • One of the following findings made? • Necessary for the immediate preservation of the public peace, health and safety, or general welfare. • Necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof. (Fish & Game Code 240) 	
6. PUBLIC COMMENTS	
<p>Public comment(s) acceptable for consideration?</p> <ul style="list-style-type: none"> • Submitted in writing? • Received by OAL prior to the time: <ul style="list-style-type: none"> ▪ OAL makes approval/disapproval decision, and ▪ Within 5 calendar days after receipt of the regulation by OAL? • Indicate comment is submitted to OAL for consideration in connection with an emergency regulation review; and • Identify topic of emergency regulation to which comment relates? 	

<ul style="list-style-type: none"> • Comment accompanied by a written statement confirming that a copy of the comment has been transmitted to the rulemaking agency's contact person for the emergency rulemaking filing, as designated on the Form 400? <p>Unacceptable comment(s) returned to commenter without being considered? (1 CCR 55(a))</p>	
<p>Agency advised of opportunity to respond?</p> <ul style="list-style-type: none"> • Rulemaking agency telephoned within one working day after the receipt of an acceptable comment to confirm that the comment is being considered by OAL? • Agency advised that it has the opportunity to rebut or otherwise respond to the comment? (1 CCR 55(b)) 	
<p>Agency response acceptable for consideration?</p> <ul style="list-style-type: none"> • In writing? • Received by OAL within 8 calendar days after receipt of the emergency filing? • If 8th day is a Saturday, response received by Friday? • If state holiday(s) between 5th and 8th day after receipt of the filing, response in by 9th day? If 9th day is Saturday, Sunday, or state holiday, response received by 10 A.M. on last review day? (1 CCR 55(f) & (g), 11349.6(b)) 	
<p>Agency provided with opportunity to rebut or comment on any information not submitted by the rulemaking agency, but considered by OAL when determining whether to file an emergency regulation? (11349.6(c))</p>	
<p>7. EMERGENCY ESTABLISHED?</p>	
<ul style="list-style-type: none"> • Statutory Emergency? • Alternatively, do materials (including public comments, if considered) demonstrate that the action is necessary for the immediate preservation of the public peace, health and safety, or general welfare? (11349.6(b)) The enactment of an urgency statute does not, in and of itself, constitute a need for immediate action. (11346.1(b)) 	
<p>Identified, published appellate decisions regarding emergency regulations.</p> <ul style="list-style-type: none"> • <i>California Association of Nursing Homes v. Williams</i> (1970) 4 Cal.App3d 800, 84 Cal.Rptr. 590, 85 Cal.Rptr. 735 • <i>Schenley Affiliated Brands Corp. v. Kirby</i> (1971) 21 Cal.App.3d 177, 98 Cal.Rptr. 609. • <i>California Medical Association v. Brian</i> (1973) 30 Cal.App.3d 637, 106 Cal.Rptr. 555 	

<ul style="list-style-type: none"> • <i>Poschman v. Dumke</i> (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596 (crisis situation, emergent or actual—seriously affect public peace, health and safety or general welfare) • <i>Carmen Doe v. Wilson</i> (1997) 57 Cal.App.4th 296, 67 Cal.Rptr.2d 187 (unforeseen situation calling for immediate action) 	
8. SUBSTANTIVE REQUIREMENTS	
<p><i>AUTHORITY</i> (11349(b), 11342.1, 11342.2; 1 CCR 14)</p> <ul style="list-style-type: none"> • Citations specific, accurate, complete? • Specific authority to impose fine or imprisonment? (11145) • Fire and panic safety regulations approved by State Fire Marshal? (11359) • Does regulation alter, amend, or enlarge a statute? (1 CCR 14(c)) <p><i>REFERENCE</i> (11349(e); 1 CCR 14(b))</p> <ul style="list-style-type: none"> • Citations specific, accurate, complete? <p><i>CONSISTENCY</i> (11342.2, 11349(d))</p> <ul style="list-style-type: none"> • Statutes enforced or administered by agency? • Collection of social security number from applicant for issuance or renewal of license? (Family Code 17520(d)) • Public Records Act? (6250-6270) • Information Practices Act? (Civil Code 1798) • Bagley-Keene Open Meeting Act? (11120-11132) • CEQA? (Public Resources Code 21000, 21080.5; 14 CCR 15000, 15250, 15307, 15308) • <i>Other applicable statutes or regulations?</i> <p><i>CLARITY</i> (11349(c); 1 CCR 16)</p> <ul style="list-style-type: none"> • Presumed unclear? See 1 CCR 16. • Title of a document (including a form) incorporated by reference clearly set out in the text? Specific identification of the part of the document incorporated, if appropriate? (1 CCR 20(c)(5)) • Statement in text that a document, or part, is incorporated by reference? (1 CCR 20(c)(4)) • Statement in text of revision date (or other specific identifier) of the particular version incorporated? <p><i>EXCEPTION:</i> No date required if authorizing statute requires adoption/ enforcement of incorporated provision and any subsequent amendments. (1 CCR 20(c)(4))</p>	
<p><i>NONDUPLICATION</i> (11349(f), 11346.2(b)(5); 1 CCR 12)</p> <p><i>NECESSITY</i> (11349(a); 1 CCR 10)</p>	